

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-AT-291
)	
Small Town Radio, Inc.)	NAL/Acct. No.200332480007
Licensee of WDGR(AM), Dahlonge, GA)	
Alpharetta, GA)	FRN 0005-0483-35
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 13, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Small Town Radio, Inc. (“Small Town Radio”), licensee of WDGR(AM), Dahlonge, GA, apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Sections 73.49 and 11.35(a) of the Commission's Rules (“Rules”).¹ Specifically, we find Small Town Radio apparently liable for failure to maintain operational emergency alert system (“EAS”) equipment and failure to maintain an effective locked fence around the base of the antenna tower for Radio Station WDGR(AM).

II. BACKGROUND

2. On October 21, 2003, an agent of the Commission’s Atlanta Field Office inspected the fence surrounding the base of the antenna tower of radio station WDGR(AM). The agent found that the gate of the fence was opened and that several boards were missing from the fence allowing unrestricted access to the base of the antenna structure. During a telephone conversation with Don Boyd, President of Small Town Radio, Mr. Boyd told the agent that he was aware of the fencing problem and that he had intended to have the fence fixed.

3. That same day, the agent inspected the station’s EAS equipment. The station had a Sage EAS ENDEC, however the unit was not connected to any receivers and was unable to monitor the two required EAS sources. There were no EAS logs at the station to demonstrate that the EAS unit had ever been operational or that the system was temporarily taken out of service for repair. The operator on duty was unfamiliar with the operation of the EAS unit and indicated that he had never sent nor received an EAS alert from the EAS unit.

¹ 47 C.F.R. § 73.49 and 11.35(a).

III. DISCUSSION

4. Section 73.49 requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. On October 21, 2002, the gate of the fence surrounding the tower base was opened and there were several boards missing from the fence itself, thus allowing unrestricted access to the antenna structure. Moreover, even though Small Town Radio was aware of the fencing violation, the licensee still failed to take any measures to prohibit access to the antenna structure.

5. Section 11.35(a) requires that radio stations maintain operational EAS equipment during all times the station is in operation. On October, 21, 2002, the EAS unit was not capable of receiving alerts and there was no evidence that the unit was capable of sending EAS alerts. In addition, the station records contained no entries of any EAS activity or that EAS equipment had been removed from service for repair.²

6. Based on the evidence before us, we find Small Town Radio willfully³ and repeatedly⁴ violated Sections 73.49 and 11.35(a) of the Rules by failing to maintain an effective locked fence around the base of the station's antenna tower and by failing to maintain operational EAS equipment.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failing to maintain an effective locked fence around the base of the antenna structure is \$7,000 and for failing to maintain operational EAS equipment is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a \$15,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections

² See 47 C.F.R. §§ 11.35 and 11.61.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

0.111, 0.311 and 1.80 of the Rules,⁸ Small Town Radio, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Sections 73.49 and 11.35(a) of the Rules by failing to maintain an effective locked fence around the base of the station's antenna structure and by failing to maintain operational EAS equipment.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Small Town Radio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Small Town Radio, Inc., 12600 Deerfield Parkway, Suite 100, Alpharetta, Georgia 30004.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
Atlanta Office, Enforcement Bureau

Attachment